

**Serial: 240142**

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2018-M-01063**

**GREGORY LINSON**

***Petitioner***

***v.***

**STATE OF MISSISSIPPI**

***Respondent***

**EN BANC ORDER**

Before the en banc Court is Gregory Linson's Application for Leave to Proceed in the Trial Court.

Linson was convicted of selling cocaine and sentenced as both a subsequent offender and a habitual offender to sixty years in prison. *Linson v. State*, 9 So. 3d 1210, 1211 (Miss. Ct. App. 2009). The Court of Appeals affirmed. *Id.* at 1212. And the mandate issued on June 16, 2009.

This is Linson's seventh post-conviction application. *See* Order, *Linson v. State*, No. 2018-M-01063, at \*1 (Miss. Dec. 6, 2018). He makes five claims: (1) his sentence is illegal; (2) the statute he was convicted and sentenced under is unconstitutional; (3) material facts not previously presented require that his conviction and sentence be vacated; (4) the chain of custody for the cocaine was insufficient; and (5) the State violated his due-process rights by failing to disclose the evidence-log book.

An illegal-sentence claim is a recognized exception to the time, waiver, and successive-writ bars. *Rowland v. State*, 98 So. 3d 1032, 1036 (Miss. 2012) (citing *Ivy v. State*, 731 So. 2d 601, 603 (Miss. 1999)), *overruled on other grounds by Carson v. State*, 212 So. 3d 22 (Miss. 2016). To merit waiving the bars, however, the claim must have some arguable basis. *See Fluker v. State*, 170 So. 3d 471, 475 (Miss. 2015) (quoting *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010)).

Linson neither explains his illegal-sentence claim nor cites any authority. *See Simon v. State*, 857 So. 2d 668, 681 (Miss. 2003) (stating that “failure to cite authority means the petitioner’s argument lacks persuasion and the issue may be barred from review” (citing *Brown v. State*, 798 So. 2d 481, 497, 506 (Miss. 2001))). We find that his claim is insufficient to merit relief from the bars.

A claim challenging the constitutionality of the statute that was the basis for the conviction and sentence has not been recognized as an exception to the bars. *But see Fulgham v. State*, 47 So. 3d 698, 700 (Miss. 2010) (excepting a claim that the conviction was under an unconstitutionally vague statute). Even if excepted, Linson’s claim is insufficient to merit relief from the bars. He neither explains the claim nor cites any authority.

Finally, Linson’s remaining claims concern the cocaine that was presented as evidence at trial. These claims were capable of determination at trial and/or on direct appeal; therefore, they are waived unless cause and actual prejudice merit relief from the waiver bar. *See* Miss. Code. Ann. § 99-39-21(1) (Rev. 2020). We find that the claims are insufficient to merit relief from the bars.

After due consideration, we find that the application should be denied.

Twice, Linson has been warned of possible sanctions for frivolous filings. *See* Order, *Linson v. State*, No. 2018-M-01063, at \*2 (Miss. Dec. 6, 2018) (citing En Banc Order, *Dunn v. State*, 2016-M-1514 (Miss. Nov. 15, 2018)); Order, *Linson v. State*, No. 2011-M-00377, at \*2 (Miss. Oct. 26, 2011). The most recent warning said that “future filings deemed frivolous may result not only in monetary sanctions, but also restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) *in forma pauperis*.” Order, *Linson v. State*, No. 2018-M-01063, at \*2 (Miss. Dec. 6, 2018) (citing En Banc Order, *Dunn v. State*, 2016-M-1514 (Miss. Nov. 15, 2018)). We find that this filing is frivolous and that sanctions are proper.

IT IS THEREFORE ORDERED that Linson’s Application for Leave to Proceed in

the Trial Court is denied.

IT IS FURTHER ORDERED that Linson is hereby restricted from filing further applications for post-conviction collateral relief (or pleadings in that nature) that are related to this conviction and sentence *in forma pauperis*. The Clerk of this Court shall not accept for filing any further applications for post-conviction collateral relief (or pleadings in that nature) from Linson that are related to this conviction and sentence unless he pays the applicable docket fee.


SO ORDERED.

TO DENY WITH SANCTIONS: RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

TO DENY: KITCHENS AND KING, P.JJ.

KING, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS, P.J.

**DIGITAL SIGNATURE**  
**Order#:** 240142  
**Sig Serial:** 100005034  
**Org:** SC  
**Date:** 02/10/2022

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David M. Ishee, Justice

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2018-M-01063**

**Gregory Linson**

**v.**

**State of Mississippi**

**KING, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH  
SEPARATE WRITTEN STATEMENT:**

¶1. Today, this Court prioritizes efficiency over justice and bars Gregory Linson from its doors. Because the imposition of monetary sanctions against indigent defendants and the restriction of access to the court system serve only to punish those defendants and to violate rights guaranteed by the United States and Mississippi Constitutions, I strongly oppose this Court's order restricting Linson from filing further petitions for post-conviction collateral relief *in forma pauperis*.

¶2. This Court seems to tire of reading motions that it deems "frivolous" and imposes monetary sanctions on indigent defendants. The Court then bars those defendants, who in all likelihood are unable to pay the imposed sanctions, from future filings. In choosing to prioritize efficiency over justice, this Court forgets the oath that each justice took before assuming office. That oath stated in relevant part, "I . . . solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich. . . ." Miss. Const. art. 6, § 155. Yet this Court deems the frequency of Linson's filings to be too onerous a burden and decides to restrict Linson from filing subsequent applications for

post-conviction collateral relief. *See In re McDonald*, 489 U.S. 180, 186–87, 109 S. Ct. 993, 997, 103 L. Ed. 2d 158 (1989) (Brennan, J., dissenting) (“I continue to find puzzling the Court’s fervor in ensuring that rights granted to the poor are not abused, even when so doing actually increases the drain on our limited resources.”).

¶3. Article 3, section 25, of the Mississippi Constitution provides that “*no person* shall be debarred from prosecuting or defending *any civil cause for or against him or herself*, before any tribunal in the state, by him or herself, or counsel, or both.” Miss. Const. art. 3, § 25 (emphasis added). Mississippi Code Section 99-39-7 provides that actions under the Uniform Post-Conviction Collateral Relief Act *are civil actions*. Miss. Code Ann. § 99-39-7 (Rev. 2020). Therefore, this State’s Constitution grants unfettered access in civil causes to any tribunal in the State. The Court’s decision to deny Linson’s filing actions *in forma pauperis* is a violation of his State constitutional right to access to the courts.

¶4. The decision to cut off an indigent defendant’s right to proceed *in forma pauperis* is also a violation of that defendant’s fundamental right to vindicate his constitutional rights, for

Among the rights recognized by the Court as being fundamental are the rights to be free from invidious racial discrimination, to marry, to practice their religion, to communicate with free persons, to have due process in disciplinary proceedings, and to be free from cruel and unusual punishment. As a result of the recognition of these and other rights, the right of access to courts, which is necessary to vindicate all constitutional rights, also became a fundamental right.

Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court-It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471, 474–75 (1997).

As United States Supreme Court Justice Thurgood Marshall stated,

In closing its doors today to another indigent litigant, the Court moves ever closer to the day when it leaves an indigent litigant with a meritorious claim out in the cold. And with each barrier that it places in the way of indigent litigants, and with each instance in which it castigates such litigants for having “abused the system,” . . . the Court can only reinforce in the hearts and minds of our society’s less fortunate members the unsettling message that their pleas are not welcome here.

*In re Demos*, 500 U.S. 16, 19, 111 S. Ct. 1569, 1571, 114 L. Ed. 2d 20 (1991) (Marshall, J., dissenting). Instead of simply denying or dismissing those motions that lack merit, the Court seeks to punish Linson for arguing his claims.

¶5. Although each justice took an oath to do equal right to the poor and rich, this Court does not deny access to the court defendants who are fortunate enough to have monetary resources. Those defendants may file endless petitions, while indigent defendants are forced to sit silently by. An individual who, even incorrectly, believes that she has been deprived of her freedom should not be expected to sit silently by and wait to be forgotten. “Historically, the convictions with the best chances of being overturned were those that got *repeatedly reviewed on appeal* or those chosen by legal institutions such as the Innocence Project and the Center on Wrongful Convictions.” Emily Barone, *The Wrongly Convicted: Why more falsely accused people are being exonerated today than ever before*, Time, <http://time.com/wrongly-convicted/> (emphasis added) (last visited Sep. 9, 2021). The Washington Post reports that

the average time served for the 1,625 exonerated individuals in the registry is more than nine years. Last year, three innocent murder defendants in Cleveland were exonerated 39 years after they were convicted—they spent their entire adult lives in prison—and even they were lucky: We know without doubt that the vast majority of innocent defendants who are convicted of crimes are never identified and cleared.

Samuel Gross, Opinion, *The Staggering Number of Wrongful Convictions in America*, Washington Post (July 24, 2015), [http://wapo.st/1SGHcyd?tid=ss\\_mail&utm\\_term=.4bed8ad6f2cc](http://wapo.st/1SGHcyd?tid=ss_mail&utm_term=.4bed8ad6f2cc).

¶6. Rather than violating Linson’s fundamental rights by restricting his access to the courts, I would simply find his petition for post-conviction relief lacked merit.

**KITCHENS, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.**